

EXHIBIT D

17:27:33

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UNITED STATES DISTRICT COURT

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WESTERN DISTRICT OF NEW YORK

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*****SEALED TRANSCRIPT*****

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MOOG INC.,

Plaintiff)

22-CV-187

5

vs.

Buffalo, New York

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SKYRYSE, INC., et al

) May 5, 2022

Defendant.

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STATUS CONFERENCE

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Proceeding held via Zoom for Government Platform

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TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE JEREMIAH J. MCCARTHY

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UNITED STATES MAGISTRATE JUDGE

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FOR PLAINTIFF: SHEPPHARD MULLIN RICHTER & HAMPTON, LLP

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BY: RENA ANDOH, ESQ.

LAI YIP, ESQ.

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KAZIM A. NAQVI, ESQ.

TRAVIS J. ANDERSON, ESQ.

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-and-

HODGSON RUSS, LLP

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BY: ROBERT J. FLUSKEY, JR, ESQ.

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FOR DEFENDANT: GIBSON DUNN & CRUTCHER, LLP

SKYRYSE

BY: KATHERINE DOMINGUEZ, ESQ.

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JUSTINE M. GOEKE, ESQ.

-and-

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HARRIS BEACH, LLP

BY: TERRANCE P. FLYNN, ESQ.

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-and-

LATHAM & WATKINS, LLP

20

BY: DOUGLAS E. LUMISH, ESQ.

GABRIEL S. GROSS, ESQ.

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FOR DEFENDANT:

PILKINGTON/KIM

LOCKE LORD, LLP

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BY: RORY S. MILLER, ESQ.

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COURT REPORTER: Karen J. Clark, Official Court Reporter

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15:23:05 2 place. That is Moog's view. And, obviously, we're not
15:23:08 3 looking to delay the document production further. We're
15:23:10 4 the ones who are asking for the Court to impose, you
15:23:14 5 know, the discovery schedule that we attached. But I
15:23:19 6 think we would be concerned about producing actual,
15:23:23 7 actual trade secret sensitive documents without having
15:23:27 8 some kind of a protective order that actually has been
15:23:30 9 ordered.

15:23:31 10 MS. DOMINGUEZ: To be clear, your Honor,
15:23:33 11 what we have suggested and we're willing to abide by was
15:23:37 12 Skyryse was and is willing to make document productions
15:23:41 13 designated subject to the draft order without that order
15:23:45 14 being entered, understanding among all of the parties
15:23:48 15 that the order would be filed until such time that a
15:23:51 16 final order is entered.

15:23:52 17 MAGISTRATE JUDGE MCCARTHY: Does anybody
15:23:53 18 have -- that is a statement that has just been made on
15:23:56 19 the record, and if everyone agrees on the record that
15:23:58 20 that is how it's going to be applied, then, I mean, de
15:24:05 21 facto, the protective order is governing unless and
15:24:08 22 until a different order is entered.

15:24:15 23 MR. FLUSKEY: Your Honor, could be I heard
15:24:17 24 on that?

15:24:18 25 MAGISTRATE JUDGE MCCARTHY: Yes, go ahead.

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16:07:36 2 Now, in terms of what we find problematic
16:07:39 3 with Skyryse's proposed protocol, their protocol
16:07:43 4 basically blocks all of our access. Under their
16:07:47 5 protocol we get zero access to the forensic images. All
16:07:51 6 we get is to provide search terms to the neutral vendor,
16:07:56 7 which must be agreed to by Skyryse in advance. The
16:08:00 8 neutral vendor then runs those search terms, provides
16:08:05 9 the resulting files to the Defendants for a privilege
16:08:07 10 review, and we get whatever is left over after their
16:08:10 11 privilege review. We would then review those documents
16:08:13 12 and determine if further searches are needed and then
16:08:16 13 the process begins again and we do this again and again
16:08:19 14 and again. This approach will not only take a very long
16:08:23 15 time, way more time than we have to spare in this case
16:08:28 16 across 50, nearly 60 devices. It will be totally
16:08:34 17 ineffectual in uncovering the facts and the truth in
16:08:37 18 this case. For example, searching for search terms will
16:08:43 19 not enable us to fully uncover the spoliation, the
16:08:48 20 extensive spoliation that we believe has occurred on
16:08:51 21 these devices. To find spoliation, searching for words
16:08:57 22 is not enough. You have to look at underlying metadata,
16:09:00 23 which will indicate where data has been deleted.
16:09:04 24 Second, as I mentioned earlier, at least over 1.3
16:09:07 25 million files have been stolen, which covers a huge

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16:09:11 2 diversity of file types and projects and many of these
16:09:15 3 files are not chiefly composed of words that can be
16:09:19 4 searched for such as drawings, designs, schematics,
16:09:24 5 executables, images models diagrams, there are
16:09:28 6 hand-drawn figures that are at issue, object files and
16:09:31 7 so forth. And as another example, unrelatedly, much of
16:09:38 8 the use and Ms. Andoh touched on this earlier much of
16:09:41 9 the use is not literal copying at all like taking an
16:09:45 10 image and copying it over from one directory to another.
16:09:48 11 It's adapting Moog's processes. Their data flows, their
16:09:53 12 algorithms, their structure, their architecture. Again,
16:09:59 13 searching for words will not be sufficient to find
16:10:02 14 evidence of this type of use and theft. So, from our
16:10:30 15 view, to adequately uncover the kinds of
16:10:34 16 misappropriation that I have just identified, you really
16:10:37 17 need a human being to look at the file, to compare them
16:10:41 18 side by side and to draw from their experience and their
16:10:44 19 expertise and their judgment to follow the truth of
16:10:48 20 misappropriation that we believe has taken place. You
16:10:52 21 can't just do this kind of brute force mechanical search
16:10:56 22 for words, which is what Skyryse is proposing. That is
16:11:01 23 not going to work here. What we believe is that what we
16:11:06 24 need to do here is a much more sophisticated nuanced
16:11:10 25 analysis to be able to uncover the full extent of the